

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC SAFETY

Call to Order: By **CHAIRMAN TIM CALLAHAN**, on January 28, 2005 at 8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Rep. Tim Callahan, Chairman (D)
Sen. Trudi Schmidt, Vice Chairman (D)
Sen. Keith Bales (R)
Sen. Steven Gallus (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)

Members Excused: None.

Members Absent: Rep. John E. Witt (R)

Staff Present: Brent Doig, OBPP
Harry Freebourn, Legislative Branch
Shannon Scow, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 2; Department of Justice,
Division of Criminal Investigation,
Legal Services Division, Agency
Legal Services
Executive Action: None

Hearing: Department of Justice

Mr. Freebourn distributed Exhibit 1, which shows the Department of Justice decision packages (DP's). The elected official requests are highlighted in yellow and the Schweitzer addendum, PL 111, is highlighted in orange. Exhibit 2 is the LFD issue list related to the DP's; elected official requests and the Schweitzer addendum are noted the same as in Exhibit 1.

EXHIBIT(jch22a01)

EXHIBIT(jch22a02)

Division of Criminal Investigation

{Tape: 1; Side: A; Approx. Time Counter: 6.5 - 29.5}{Tape: 1; Side: B; Approx. Time Counter: 0 - 15.5; Comments: Investigations Bureau}

Mike Batista, Administrator of the Division of Criminal Investigation, informed the committee that the Division handles the functions and divisions identified in Exhibit 3: the Investigations Bureau, Narcotics Bureau, and the Law Enforcement Academy.

EXHIBIT(jch22a03)

The Investigations Bureau works in internal affairs investigations and investigations that cross counties. Internal affairs investigations monitor law enforcement officials; a recent case led to the arrest of an officer who was then charged with sexual abuse. A cross-county investigation involves law enforcement from many counties in a single case, such as the State v. George Harold Davis. The Division also investigates Medicaid Fraud and Worker's Compensation Fraud.

SEN. SCHMIDT asked about the current backlog in cases. **Mr. Batista** replied that last year the Medicaid Fraud Unit turned down forty cases. All of the Worker's Compensation case requests were fulfilled.

Mr. Batista stated that the biggest growth area is in computer crime, including hacking, monetary and identity theft, exploitation of children, drug crimes, counterfeiting, homicide, and telecommunications crimes.

{Tape: 1; Side: B; Approx. Time Counter: 23.6 - 26; Comments: Computer Crime Stories}

CHAIRMAN CALLAHAN inquired, "How many Full-Time Equivalent (FTE) support the computer crimes agency?" **Mr. Batista** responded that there are currently two FTE that are doing well with the growing caseload.

Mr. Batista informed the committee that details on the Sexual and Violent Offender Registry, also under this Division, can be found at www.doj.state.mt.us/svor. There are currently about 300 offenders who are non-compliant and the Department of Justice (DOJ) is looking at making investigations to track these individuals.

SEN. SCHMIDT asked if all registered offenders come through the DOJ or if they also go to the district to register. **Mr. Batista** replied that the DOJ is the central registry, although districts may have a list of their local offenders so the community can be notified.

Mr. Batista next explained the Intelligence and Homeland Security Agency. The Division has presented the committee with a DP to ask for staffing of the Automated Intelligence System, which will be funded through Federal Homeland Security money. This system will help maintain the Montana Intelligence Center that is important in coordinating communication between law enforcement entities on drug and immigration issues. It will also be used for tactile intelligence, such as checks on criminal history.

SEN. BALES inquired about the situation on the Canadian border. **Mr. Batista** explained that Homeland Security protects the Montana/Canada border because it is a long border with infrequent ports of entry. Communication needs to be maintained with Canadian officials to identify terrorist group in Canada. Also, Canada is the largest producer of marijuana bud, which is transported through the Montana border.

Mr. Batista stated that the Division of Criminal Investigation is also part of a joint terrorism task force, based out of Fort Harrison. This task force deals with issues of foreign and domestic terrorism. Their current caseload is small.

Mr. Batista next elucidated on the Amber Alert program, which was created with federal funding to help with children that have been abducted. This has created instant notification of an abduction through phone or e-mail to agencies such as broadcast systems, the Department of Transportation and gas stations. Federal funding was one-time-only, so more funding is now needed.

The final program within the Investigations Bureau is Fire Prevention and Investigation. He noted that this staff, which was reduced during the 2002 Special Session, is responsible for fire investigation statewide. Exhibit 4 is a recommendation for the State Fire Marshall's Office done by the Division of Criminal Investigation. This recommendation is as requested by the last legislative session. The Fire Marshall's tax that funds this program is now put in the general fund. **Mr. Batista** recommends that this is the best way to fund this agency. He added that there are a number of services that this agency has not been able to provide because of the low staffing level; inspections are prioritized, listed on Exhibit 4, Page 3. He recommends that staffing levels should be reinstated to 2000 levels if more investigations and services are to be provided.

EXHIBIT(jch22a04)

Mr. Freebourn clarified that this is an additional request that is not listed in the Department's DP's.

{Tape: 1; Side: B; Approx. Time Counter: 16.1 - 24; Comments: Narcotics Bureau}

Mr. Batista informed the committee that currently 80% of Narcotics Bureau cases deal with the methamphetamine problem. The Division has offices throughout the state that handle investigations, public education and lab clean-up. He noted that they are very well-trained in undercover, which is hard in Montana because many cases take place in small communities that know everyone. He then gave examples of cases that the Division has handled.

{Tape: 1; Side: B; Approx. Time Counter: 21.3 - 24; Comments: Narcotics Bureau stories}

The Narcotics Bureau will be affected by the funds lost with the Byrne Grant fund reduction. There will be a fund reallocation, but the state drug task force will be significantly reduced. Seventeen state employees are funded through this money. He emphasized that the committee needs to make a commitment to the state drug task force, and asked for general fund backing. Exhibit 5 shows the drug task force funding proposal.

EXHIBIT(jch22a05)

REP. HAWK commented that his sheriff said that the task force funding in his districts was lost last spring. **Mr. Batista**

stated that the office has been moved to Great Falls, but Hamilton and the rest of REP. HAWK's district is still covered.

SEN. GALLUS stated that not much is left in the general fund. He noted that the drug task force issue is important but this request will mean funds from either the DOJ budget or another budget. Therefore, he asked the DOJ to prioritize their general fund requests.

{Tape: 2; Side: A; Approx. Time Counter: 2.7 - 9; Comments: Law Enforcement Academy}

Mr. Batista stated that the committee learned much about the Law Enforcement Academy yesterday. He highlighted that the Highway Patrol is now also using the facility. He also reminded the committee of the potential for teleconferencing training that is currently being tested.

CHAIRMAN CALLAHAN stated that most local law enforcement have had to do their own training. He inquired, "Will this now take place at the Academy?" **Mr. Batista** confirmed this statement.

Mr. Batista distributed Exhibit 6, which gives details on the proposal for a Law Enforcement Academy store.

EXHIBIT (jch22a06)

Division of Criminal Investigation Budget Requests

{Tape: 2; Side: A; Approx. Time Counter: 9.3 - 30}{Tape: 2; Side: B; Approx. Time Counter: 0 - 15; Comments: Budget Requests}

Mr. Batista referred the committee to Page D-42 of the Legislative Fiscal Division (LFD) Budget Analysis for the Division of Criminal Investigation DP's. DP 18 is for the Law Enforcement Academy Base Adjustment. He explained that this has been changed from general fund to a fund supplied by a court surcharge on certain court filings. These surcharges have been low but the Academy managed this last fiscal year (FY). They predict that revenues will come back up to reinforce funding at the 2004 level. **Mr. Freebourn** added that the LFD issue on this DP no longer is valid because the funding is predicted to be sufficient.

SEN. SCHMIDT quoted the last sentence on D-42, "The department did find out via an audit during FY 2005 that about \$0.2 million of the surcharge was sent to the Judiciary by mistake, increasing the total collections to \$0.7 million." **Mr. Freebourn** confirmed

that the audit did reveal misdirected funding, and it has been corrected.

SEN. BALES asked why the additional appropriation of \$180,530 shown in DP 18 was dropped from the Academy's base. **Mr. Freebourn** said that the committee needs to reapprove authority because the total appropriation was not spent last biennium. **Mr. Doig** said that the full appropriation was not spent because the agency did not have enough cash inflow.

Mr. Batista returned to DP explanations with DP 19, one FTE for a Narcotics Regional Agent located in Miles City. **Mr. Freebourn** explained that funding for both years of this FTE are on two places on Exhibit 1, Page 2. FY07 is under DP 19 and FY06 is under "Narcotics Regional Agent" in the highlighted section for elected official proposals. **Mr. Doig** explained that only the second year of funding was included under the Governor's Budget to create a structurally balanced budget under the general fund target.

Mr. Freebourn reminded the committee that the Department will prioritize their proposals, which will help the committee determine whether to fund this position both years of the biennium.

Mr. Batista asks for the Vehicle Replacement Program to be reinstated in DP 20. This program replaces vehicles on a regular basis because older vehicles need extensive repairs and are not reliable for enforcement purposes.

CHAIRMAN CALLAHAN asked an open question about DOJ funding, inquiring how the Department determines general fund or state special revenue funding. **Mr. Batista** replied that all programs are general fund except for worker's compensation.

Mr. Batista said that DP 21, Medicaid Fraud, is for the increased cost of training, travel and stay of Medicaid Fraud agents.

SEN. SCHMIDT inquired if the Department works with Department of Health and Human Services to reduce the number of fraud cases.

Mr. Batista responded that there is public education in all fraud programs and that a difference in the amount of cases has been seen with the increase in programs.

REP. HAWK asked, "Who gets the money when fraud is determined?"

Mr. Batista said that Medicaid is reimbursed for the money that has been taken. **REP. HAWK** asked if the DOJ gets any of the money

to fund education programs. **Mr. Batista** replied that it is rare to recover the invested costs.

The next DP's in which **Mr. Batista** provided comment are the new proposals on D-44 of the LFD Budget Analysis. DP 16 is spending authority for Homeland Security, which has been discussed. DP 17 is to fund a Tri-Agency Drug Task Force that would focus on the Montana Highline agencies.

Mr. Freebourn explained that part of this DP is a new elected official proposal. This is a part of the Byrne Grant that was reduced. He asked if the agency is still looking for federal authority under DP 17. **Mr. Batista** replied that they are no longer asking for the appropriation for federal funding.

Mr. Doig asked if the Department wants to see the appropriation stay in case federal funds are available. **Mr. Freebourn** stated that the Department could ask for the general funds contingent on the failure of federal funds. **Mr. Doig** believes the general fund money should stand on its own. He reiterated that he believes the Department should keep the appropriation in case federal funding is available.

CHAIRMAN CALLAHAN inquired, "If federal funding is available, where will the committee see a decrease in funds?" **Mr. Doig** replied that the committee will see a decrease in general fund Byrne dollar request. He commented that there may end up being a double appropriation between the federal and general fund, but this issue can be fixed. He believes it easier to leave in the appropriation.

Larry Fasbender, Director of the Department of Justice, will provide to the committee a list of knowns and unknowns in relation to the state drug task force funding.

Mr. Freebourn noted a disparity between the appropriation request on Exhibit 1 and Exhibit 5 for the state drug task force. **Mr. Batista** responded that the agency is requesting the amount shown in Exhibit 5. He also informed the committee that there is not yet a DP for the Medicaid Fraud agent.

Legal Services Division

{Tape: 2; Side: B; Approx. Time Counter: 15.4 - 29.5; Comments: Legal Services Division Overview}

Galen Hollenbaugh, Deputy Chief of Staff for the Legal Services Division, first introduced the Legal Services Division by

explaining that it supports 50 FTE and has an annual budget of \$4.4 million, most of which is general funds. The committee has already heard about one federally funded position for a prosecutor that is under threat because it is supported through Byrne Grant funds. He then walked through the five bureaus within Legal Services Division; Prosecution Services Bureau, Appellate Legal Services, Civil Services Bureau, Office of Victim Services and Restorative Justice, and County Prosecutor Services. Descriptions and DP's for these programs begin on Page D-13 of the LFD Budget Analysis.

Prosecution Legal Services ensures that criminal laws are applied uniformly and that criminals are put behind bars. Appellate Legal Services is responsible for handling criminal appeals statewide, both direct appeals and post-conviction appeals. He added that cases in this division are rising dramatically.

CHAIRMAN CALLAHAN inquired if there was a reason for the drastic increase in cases. **Mr. Hollenbaugh** stated that good prosecution means more appellate cases. He stated that he can put together a statistics on why cases are appealed.

Mr. Hollenbaugh continued with the Civil Services Bureau, which is responsible for providing legal research and analysis of questions submitted for the Attorney General. They also work on cases in which there are constitutional challenges to the state.

The Office of Victim Services and Restorative Justice serves as the central contact for victims of crime. It coordinated claims paid to the state by offenders and restitution paid to victims of crime.

CHAIRMAN CALLAHAN asked if there was a federal match for Victim Services and if the state is maximizing their ability to get the federal match. **Mr. Hollenbaugh** replied that there is a 60% federal, 40% state match. This comes from the Victim of Crimes Act. **Matt Dale, Director of the Office of Victim Services**, explained that the state will pay a maximum of \$25,000 to offset physical and mental health injuries. The federal government will match 60% of any amount that the state puts into Victim Services. The office cannot maximize the federal match currently, but are trying to remedy this problem. Victim Services is asking to keep in their budget the amount they collect in restitution; currently this \$200,000 goes into the general fund, which does not allow for a federal match of dollars.

CHAIRMAN CALLAHAN asked if the office has looked at other ways to run all restitution paid in the state through the Victim Services

Office so the federal match can be collected. **Mr. Dale** responded that for the federal match the restitution has to be money applied to claims. He added that there is a bill that is out to remedy the problem stated above.

Legal Services Division Decision Packages

{Tape: 3; Side: A; Approx. Time Counter: 0 - 28.3; Comments: Decision Packages}

Galen Hollenbraugh referred to Exhibit 1, Page 1, Program 1 and Page D-15 of the LFD Budget Analysis for DP's relating to Legal Services Division. DP 111 is for the major litigation fund that covers extra legal costs for the cases listed in the LFD comment box on Page D-15. He added that this fund generally runs short.

Mr. Freebourn noted that this is a biennial appropriation, most of which went to the tobacco case settlement in the last biennium. The state is required to track tobacco vendors that operate within the state to adhere to the terms of the settlement. The Division wants one FTE to track this money to ensure the Department gets the full settlement, as described in Exhibit 7.

EXHIBIT (jch22a07)

SEN. BALES asked if settlement dollars could be used to ensure compliance. **Mr. Hollenbraugh** replied that the settlement dollars go to the general fund and are not earmarked. **Karen Monroe, Central Services Division**, explained that 11% of the settlement goes to the general fund and 89% goes to the Department of Public Health and Human Services (DPHHS).

REP. HAWK stated that he thought the money went to a trust fund. **Ms. Monroe** replied that some of the 89% does go to a trust fund, but she is unaware of the exact breakdown. **REP. HAWK** reiterated his wish to take money to keep the case in compliance out of the 11% as an earmarked fund.

Mr. Freebourn stated that he will bring information to the committee on what money is collected, where they are distributed, and what is needed to earmark funds.

CHAIRMAN CALLAHAN asked if the 11% is going to a specific purpose in the general fund. **Mr. Freebourn** referred to Page D-14, responding that he does not believe any of the funds are earmarked. **REP. HAWK** commented that he knows the DPHHS is

protective of the 89% they receive from this settlement but believes the money to fund this position should come from the settlement fund.

Mr. Hollenbraugh distributed Exhibit 8 to explain the request for two Communications FTE. This request is due to increased website traffic and for information requests from entities such as the press.

EXHIBIT(jch22a08)

Mr. Dale explained the Upgrade Victim Services Database request, explained in Exhibit 9. He added that the current system is adequate but there is no one that can maintain the system if it fails. **Mr. Freebourn** stated that this request is restricted and made one-time-only.

EXHIBIT(jch22a09)

CHAIRMAN CALLAHAN asked if this program is off-the-shelf or if it is made special for Victim Services. **Mr. Dale** responded that this program is off-the-shelf but will need to be heavily adopted. It will not be available until next year because it still needs to be built and loaded.

CHAIRMAN CALLAHAN inquired if there was a time-line and costs for this program because this committee is often concerned about the development of information technology services. He stated that a developed plan may help others work from the plan to create their own. This will be provided by **Mr. Dale**.

SEN. BALES asked, "How many claims run through Victim Services?" **Mr. Dale** replied that there are currently 12,000 claimants in the system since 1995. This figure grows by approximately 5% each year.

CHAIRMAN CALLAHAN inquired if there has been discussion with other entities that collect restitution payments to collaborate a system to track these payments. **Mr. Dale** replied that he has discussed a collaborative database with other entities, but at this point his agency has a more thorough program that would have a hard time adjoining less organized systems.

CHAIRMAN CALLAHAN commented that all entities that collect restitution payments are involved in the same process. He asked **Mr. Dale** to discuss collaboration further with these entities to see if the program would be adaptable to their needs, such as the Department of Corrections and Office of the Clerk.

{Tape: 3; Side: A; Approx. Time Counter: 28.3 - 30}{Tape: 3; Side: B; Approx. Time Counter: 0 - 7; Comments: Agency Legal Services Rates}

Mr. Freebourn added that Program 6, Legal Services Division, needs rates approval from the committee on rates charged by attorneys and investigators (Exhibit 1, Page 3, Page D-17).

Mr. Hollenbraugh explained that these rates go to the proprietary fund that supports the division. He stated that these services are provided at cost effective rates to other state agencies. The LFD issues on these rates are on Pages D-18 and D-19. Essentially, the Legal Services Division needs to charge higher rates to other agencies in order to eliminate the deficit.

There are a number of options to address this shortfall in funding. The first is a rate increase, outlined in Exhibit 10. The proposed increase is from the current rate of \$71.80 per hour to \$75 in FY06 and to \$77 in FY07 for attorneys and from the current rate of \$39.80 to \$44 in FY06 and \$46 in FY07 for investigators. With this request, the Division will also be asking attorneys to increase their number of hours charged from 110 hours to 115 hours. There is concern that increasing the number of hours billed will be asking attorneys to bill up to 73% of their time. This pushes the attorneys to the maximum number of hours they can legally bill because not all time that attorneys work can be properly billed to their clients. The second option to address the deficit is to reduce the Agency Legal Services staff from 20 FTE allotted to 16 FTE, which the agency currently has on staff.

EXHIBIT(jch22a10)

Doug Booker, Central Services Division, added that the agency is trying to reduce the amount of outside work so the attorneys can bill more hours. The agency needs to run the proposal concerning this matter by the Governor's Office and the LFD.

Mr. Hollenbraugh stated that the agency has had to go to outside services and have been charged \$120 per hour. Therefore, the increase in rates will still be cost effective.

{Tape: 3; Side: B; Approx. Time Counter: 8.3 - 20; Comments: Larry Fasbender}

Larry Fasbender commented that there is a disconnect between the policy that has been set and the appropriation; to execute the policy the agency needs funding. He urged the committee to look

at the Department's priorities and well as their own for deciding appropriations because some of the committee's decisions will change DOJ policies. He described the funding of Amber Alert as a policy that will continue contingent on legislative appropriation.

He then discussed exempt staff pay raises, described on Page D-9 of the LFD Budget Analysis. He explained that DOJ wages were lower than offered elsewhere. Exhibit 11 is a comparative wage scale. The left side shows the average administrative pay for the DOJ and the right side shows the average administrative pay elsewhere. He wants to raise wages below \$82,353 closer to the average. He added that these positions do not hold stability because they are at the pleasure of the elected official. This funding would come both from the general fund and state special revenue, exact amounts shown on Page D-9. He asked the committee to include this raise into the DOJ base budget.

EXHIBIT(jch22a11)

Mr. Freebourn pointed the committee to Exhibit 1, Page 1, Program 1 for the exempt staff pay raise issue, noting that ignoring both DP-112 and the exempt staff pay raise elected official proposal would essentially approve the raises.

SEN. BALES asked if just the raise is approved and not the raise reduction, would there be a double appropriation for the raises.

Mr. Doig responded that it would give the DOJ extra funding in the base.

Mr. Fasbender explained that funding for the DOJ will be simplified with the passage of HB 102, which will provide funding for many of the stated DP's. He then returned to the tobacco settlement, stating that HB 169 will tie funding for the requested attorney to the tobacco settlement funds.

Mr. Freebourn informed the committee that discussion on the secure care contract bed expansion will continue Monday; further options for expansion will be provided to the committee prior to this meeting. Tuesday the committee will return to the DOJ section.

ADJOURNMENT

Adjournment: 11:05 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/ss

Additional Exhibits:

EXHIBIT ([jch22aad0.PDF](#))